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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 JASON P. STEWART,

10 Plaintiff,

11 v.

12 CALIFORNIA DEPARTMENT OF
EDUCATION, *et al.*,

13 Defendants.
14

Civil No. 07CV0971 JAH(CAB)

**ORDER RE: PLAINTIFF'S
APPLICATIONS
[Doc. Nos. 72, 73, 81]**

15 On September 6, 2007, Plaintiff filed a document entitled "Ex parte Application
16 to Reissue Order for U.S. Marshal to Serve Summons & Complaint to Defendant CDE"¹
17 and a motion for an enlargement of time to file a response to Defendants RCH's and
18 OAH's² motions to dismiss and strike pleadings ("first application"). On September 17,
19 2007, this Court rejected Plaintiff's responses to Defendant Rady's Children's Hospital's
20 motion to dismiss and strike and Defendant State Office of Administrative Hearings'
21 motion to dismiss as untimely and notified Plaintiff he must seek leave and provide a
22 sufficient reason for not filing the responses timely. On October 10, 2007, Plaintiff filed
23 another request for leave to file a response to Defendant RCH's motion to dismiss and
24 strike ("second application"). After a review of the documents, the Court GRANTS
25 Plaintiff's second application for leave to file a response to Defendant RCH's motion to

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27 ¹Upon review of Plaintiff's complaint, it appears, Defendant "CDE" refers to the California
Department of Education.

28 ²It appears from the complaint and docket that RCH is Rady's Children's Hospital and OAH is the
State Office of Administrative Hearings.

1 dismiss, DENIES Plaintiff's first application for additional time to file responses to RCH's
2 and OAH's motions and DENIES Plaintiff's application to direct service.

3 **I. Application to Direct Service Upon California Department of Education**

4 Without discussion or authority cited in support, Plaintiff asks the Court to direct
5 the United States Marshal to serve the summons and complaint on Defendant CDE at an
6 address he provides. Because Plaintiff fails to provide any argument in support for
7 directing service of summons of process on Defendant CDE, there is insufficient cause for
8 granting his request. Accordingly, the application to issue an order directing service is
9 DENIED WITHOUT PREJUDICE.³

10 **II. First Application for Enlargement of Time**

11 Plaintiff seeks additional time to file oppositions to motions filed by Defendant
12 RCH and OAH. This Court previously provided Plaintiff an extension of time to
13 September 4, 2007 to file a response to Defendant RCH's motion to dismiss and to strike
14 the complaint. Plaintiff was required to file a response to Defendant OAH's motion to
15 dismiss and motion to strike on or before September 4, 2007. Plaintiff fails to provide any
16 explanation for why he was unable to file a response to the motions by the deadline. As
17 such, the Court is unable to determine whether the request for additional time is
18 reasonable and the application for an enlargement of time is DENIED WITHOUT
19 PREJUDICE.⁴

20 **III. Second Application for Enlargement of Time**

21 Plaintiff asserts the volume of documents required to prove his case and the
22 complexity of the case prevented him from filing a response to RCH's motions timely. He
23 maintains he could not afford to duplicate hundreds of pages of documents and he was
24 responding to Defendant OAH's motion to dismiss. Plaintiff does not explain why the
25 duplication of "hundreds of pages of documents" is necessary to respond to a motion to
26 dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) in light of the fact

27 ³The Court will reconsider the request, if Plaintiff properly files an application containing discussion
28 in support of his request.

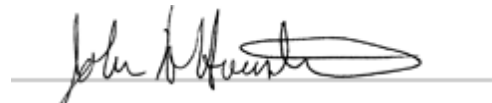
⁴ See footnote 3.

1 a court may only consider documents attached to the complaint, documents relied upon
2 but not attached to the complaint when authenticity is not contested and matters of which
3 a court takes judicial notice. See Lee v. City of Los Angeles, 250 F.3d 668, 688-89 (9th
4 Cir. 2001). Nevertheless, the Court finds Plaintiff's request for additional time to file a
5 response to Defendant RCH's motion is reasonable.

6 Accordingly, **IT IS HEREBY ORDERED:**

- 7 1. Plaintiff's application for an order to serve the summons and complaint on
8 Defendant CDE at the address provided is **DENIED WITHOUT**
9 **PREJUDICE**.
- 10 2. Plaintiff's first application to for enlargement of time to file a response to
11 Defendant RCH's motion and Defendant OAH's motion is **DENIED**
12 **WITHOUT PREJUDICE**.
- 13 3. Plaintiff's second application for additional time to file a response to
14 Defendant RCH's motion is **GRANTED**. Plaintiff shall file a response **on**
15 **or before October 26, 2007**. If Defendant Rady's Children's Hospital
16 wishes to file a reply, the reply shall be filed **on or before November 2,**
17 **2007**.

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19 DATED: October 16, 2007

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21 HON. JOHN A. HOUSTON
22 United States District Judge
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